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BEHRUZ BONSHAHI, an individual

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

BEHRUZ BONSHAHI, an individual,	)	Case No.
)	
Plaintiff,)	
)	
vs.	)	COMPLAINT FOR INJUNCTIVE
	)	RELIEF AND DAMAGES: DENIAL OF
	)	CIVIL RIGHTS AND FULL AND
	)	EQUAL ACCESS TO PUBLIC
GENERAL PLUMBING SUPPLY	)	ACCOMMODATIONS TO PERSON
COMPANY, INC., and DOES 1 through 10,	)	WITH PHYSICAL DISABILITY IN
inclusive,	)	VIOLATION OF THE AMERICANS
	)	WITH DISABILITIES ACT OF 1990
Defendants.	)	(42 U.S.C. §§ 12101 <i>et seq.</i>), AND
	)	CALIFORNIA DISABLED RIGHTS
	)	STATUTES (CIVIL CODE §§ 51, 52, 54,
	)	54.1, 54.3; HEALTH & SAFETY CODE
	)	§§ 19955 <i>et seq.</i>)
)	
)	
)	

Plaintiff BEHRUZ BONSHAHI (“plaintiff”), an individual, complains of defendant GENERAL PLUMBING SUPPLY COMPANY, INC. (“GENERAL PLUMBING”), as the owner and operator of General Plumbing Supply, located at 1530 San Luis Road, Walnut Creek, California, 94597, and DOES 1 through 10, inclusive. Plaintiff alleges as follows:

INTRODUCTION

1. This is a civil rights action for unlawful discrimination based on defendant’s failure to design, construct, and maintain a facility and its accommodations to make them readily accessible to, and usable by, individuals with disabilities when it was structurally practicable and

1 readily achievable to do so.

2 2. Defendant GENERAL PLUMBING's facility is a place of public accommodation
3 located at 1530 San Luis Road in Walnut Creek. Defendant GENERAL PLUMBING lacks
4 accessible accommodations and has denied plaintiff and other similarly situated individuals with
5 physical disabilities full and equal access to its accommodations, facilities, goods, services, and
6 opportunities that are provided to non-disabled members of the public.

7 3. Plaintiff is a person with a physical disability who requires the use of a wheelchair
8 for mobility. Plaintiff has been denied full and equal access to the accommodations and services
9 offered at defendant's facility. Plaintiff made several visits to defendant's facility as an invitee,
10 guest, patron, and customer and personally experienced actionable discrimination that violated
11 his civil rights under federal and state laws.

12 4. Defendant violated plaintiff's civil rights under Federal and California laws by
13 failing to design, construct, and provide accessible accommodations at its facility. Plaintiff
14 personally encountered barriers to full and equal access that caused him physical difficulty,
15 discomfort, and embarrassment while attempting to access accommodations at defendant's
16 facility. Thus, plaintiff seeks injunctive relief against defendant pursuant to Title III of the
17 Americans with Disabilities Act of 1990, 42 U.S.C. Section 12101, *et seq.*, and monetary relief
18 under the California Unruh Civil Rights Act, Cal. Civ. Code Sections 51, 52, and the California
19 Disabled Persons Act, Cal. Civ. Code Sections 54, 54.1, and 54.3, *et seq.*

20 **JURISDICTION AND VENUE**

21 5. This Court has original jurisdiction of this action pursuant to 28 U.S.C. Section
22 1331 for violations of the Americans with Disabilities Act of 1990, 42 U.S.C. Section 12101, *et*
23 *seq.* ("ADA"). Pursuant to 28 U.S.C. Section 1367, the Court also has supplemental jurisdiction
24 over related causes of action under California law arising from the same operative facts and
25 transactions. These related claims include violations of Cal. Civ. Code Sections 51, 52, 54 and
26 54.3, Cal. Gov't Code Section 4450, *et seq.*, Cal. Health & Safety Code Sections 19955-19959,
27 and Title 24 of the California Code of Regulations.

28 6. Venue is proper in this Court pursuant to 28 U.S.C. Section 1391(b) and is

1 founded on the facts that the real property, which is the subject of this action where plaintiff's
 2 causes of action arose, is located within this judicial district at 1530 San Luis Road, Walnut
 3 Creek, California, 94597, and in the County of Contra Costa.

4 7. Intra-district Assignment. This matter should be assigned to the San Francisco
 5 and Oakland Division of the Court under Civil Local Rule 3-2(c) and (d), because the real
 6 property where the causes of action arose is located within Contra Costa County.

7 **PARTIES**

8 8. Plaintiff requires the use of a wheelchair for mobility and for traveling about in
 9 public places. Accordingly, plaintiff is an "individual with a disability" as defined by Federal
 10 and California anti-discrimination laws enacted to ensure that individuals with disabilities are
 11 afforded full and equal access when visiting and accessing public accommodations to enjoy,
 12 participate in, experience, and benefit from, accommodations, and goods and services offered to
 13 members of the general public who are non-disabled.

14 9. Plaintiff visited defendant's business on several occasions as a customer and was
 15 denied of his civil rights to access available services and accommodations in a full and equal
 16 manner due to architectural barriers that plaintiff personally encountered.

17 10. Plaintiff is informed, believes, and alleges that defendant owns and operates, and
 18 was at all relevant times acting and performing, or failing to act or perform within its authority as
 19 the owner and operator of the business to ensure that the accommodations, goods, services, and
 20 opportunities were accessible to plaintiff and other members of the public who have physical
 21 disabilities. Defendant's failure to comply with Federal and State access laws proximately caused
 22 the violations and ongoing violations and damages to plaintiff complained of herein.

23 11. Defendant's store and accommodations are open to the general public to visit and
 24 to patronize and therefore is a "public accommodation" or "public facility" subject to the
 25 requirements of the ADA and California Civil Code Sections 51, 52, 54, 54.1, and 54.3, *et seq.*,
 26 California Health and Safety Code Section 19955, *et seq.*, and California Government Code
 27 Section 4450, *et seq.*

28 12. At all times relevant to this Complaint, defendant has been and is responsible for

ensuring that its facilities are free of architectural barriers preventing full and equal access to public accommodations for persons with disabilities as provided by Code of Federal Regulations, Title 28, Chapter I, Part 36, Subpart B, Section 36.201, and that its goods, services, and opportunities are fully and equally available to persons with disabilities. Specifically, Section 36.201 provides:

§ 36.201 General.

(a) Prohibition of discrimination. No individual shall be discriminated against on the basis of disability in the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of any place of public accommodation by any private entity who owns, leases (or leases to), or operates a place of public accommodation.

See 28 C.F.R. §36.201(a).

FACTUAL ALLEGATIONS

13. The General Plumbing Supply store is located at 1530 San Luis Road, Walnut Creek, California, 94597. The premises of this facility consists of, among other things, exterior parking spaces, access aisles, paths of travel, entrance facilities, transaction counters, and additional accommodations, all of which are each a “public accommodation” or “facility” subject to the design, construction, and barrier removal requirements under Title III of the ADA, the ADA Accessibility Guidelines (“ADAAG”), and California statutory requirements to provide and maintain barrier free accommodations under Government Code Section 4450, *et seq.*, Civil Code Sections 51, 52, 54, 54.1, and 54.3, and Health & Safety Code Section 19955, *et seq.*

14. Plaintiff is informed, believes, and alleges that defendant failed to design and construct a facility that was readily accessible to, and usable by, individuals with disabilities when it was structurally practicable to do so. Plaintiff also alleges in the alternative, that defendant failed to remove access barriers when it was readily achievable to do so. Thus, defendant has violated the ADA by failing to provide and ensure full and equal access to its public facilities and accommodations for plaintiff and similarly situated individuals.

15. Defendant’s failure to provide accessible accommodations for plaintiff and similarly situated individuals also violates accessibility standards under Title 24 of the California Code of Regulations, which is known as the California Building Standards Code or more

1 commonly as “Title 24”. Plaintiff alleges on information and belief that the aforementioned
2 facilities have been altered, modified, and/or repaired since its original construction, which in
3 turn, subjects the facilities in question and each of its public accommodations to the access
4 requirements under California Health and Safety Code Sections 19955-19959 as well as the
5 access requirements of Title 24.

6 16. Plaintiff visited General Plumbing Supply as a customer on March 8, 2022, to
7 purchase a replacement flange for a water tank. Upon driving into defendant’s parking lot,
8 plaintiff did not see an accessible parking space, access aisle, or parking signage and was forced
9 to park in a noncompliant space away from the store entrance. Parking in a noncompliant space
10 was not an ideal choice for plaintiff, because it meant another car could park next to his vehicle
11 and block the space needed for plaintiff to reenter his vehicle. Unfortunately, due to the lack of
12 accessible parking, plaintiff had no other option but to park in the inaccessible space.

13 17. Plaintiff wheeled to the side entrance of defendant’s store and encountered
14 excessive door pressure and closing speed as he tried to enter the store. Plaintiff struggled to
15 open the heavy door and experienced physical difficulty and discomfort from opening the door.
16 A sales associate assisted plaintiff with his purchase and completed the sale at a transaction
17 counter that was too high. The excessive counter height made the transaction awkward for
18 plaintiff to complete and caused him to experience difficulty, discomfort, and embarrassment.
19 Additionally, plaintiff experienced difficulty and discomfort leaving the store due to defendant’s
20 noncompliant side entrance door.

21 18. Plaintiff next visited General Plumbing Supply on March 19, 2022, to purchase a
22 flush lever for a toilet. Once again, plaintiff was forced to park in a noncompliant space because
23 he could not locate an accessible parking space, access aisle, or parking signage in defendant’s
24 parking lot. When entering defendant’s store, plaintiff encountered the same excessive door
25 pressure and closing speed and experienced physical difficulty and discomfort from opening the
26 door. Plaintiff approached an employee to ask why General Plumbing Supply did not have any
27 accessible parking spaces for wheelchair using customers. The employee looked confused and
28 said he would go outside to look for himself. The employee returned about a minute later and

1 told plaintiff that he was right about the lack of accessible parking, that there should be
2 accessible parking provided, and that he would “look into it.” Plaintiff made his purchase and
3 was forced once again to use defendant’s noncompliant transaction counter. The excessive
4 counter height made the transaction awkward to complete and caused plaintiff to experience
5 difficulty, discomfort, and embarrassment. Plaintiff also experienced physical difficulty and
6 discomfort leaving the store due to defendant’s noncompliant entrance door.

7 19. Plaintiff returned to General Plumbing Supply on March 26, 2022, to return the
8 flush lever he had purchased on March 19, 2022. Upon arriving at defendant’s business, plaintiff
9 encountered the same access barriers he previously encountered, which included a lack of
10 accessible parking spaces, the inaccessible door at the side entrance of the store, and the
11 inaccessible transaction counter. These barriers caused plaintiff to experience difficulty,
12 discomfort, and embarrassment once again from attempting to access defendant’s noncompliant
13 accommodations. After completing his return at the inaccessible sales counter, plaintiff decided
14 to visit defendant’s showroom to look at the different bathroom and kitchen products and fixtures
15 on display. To access the showroom, plaintiff had to pull open a door with a handle that was
16 mounted too high. Additionally, the door was heavy, which caused plaintiff to experience
17 physical discomfort and difficulty.

18 20. When plaintiff arrived home, he realized he had mistakenly returned a flush lever
19 purchased from a local hardware store and not the one plaintiff purchased from General
20 Plumbing Supply on March 19th. Plaintiff drove back to General Plumbing Supply on March 26,
21 2022, to exchange the flush lever purchased from defendant with the one he had mistakenly
22 returned earlier in the day. Once again, plaintiff encountered a lack of accessible parking space
23 and access aisle, the inaccessible side entrance door, and the inaccessible transaction counter.
24 These access barriers caused plaintiff to experience difficulty, discomfort, and embarrassment
25 from encountering and attempting to overcome defendant’s inaccessible accommodations.

26 21. Plaintiff is informed, believes, and alleges that defendant is aware of its obligation
27 under the ADA and California access standards and regulations to provide full and equal access
28 to services, accommodations, opportunities, and facilities that defendant offers and makes

1 available to nondisabled persons visiting its store. Yet, despite this knowledge, defendant has
2 failed to put in place accessible accommodations, facilities, policies, and procedures to ensure
3 that the different accommodations and opportunities defendant provides to the public are fully
4 and equally available to plaintiff and other persons with disabilities.

5 22. Plaintiff's adverse experiences have, on at least one other occasion after his last
6 visit to the store, deterred him from returning to the facility to avoid encountering the same
7 barriers and experiencing the same denial of full and equal access that caused him difficulty,
8 discomfort, and embarrassment after attempting to access defendant's accommodations, services,
9 and opportunities during his prior visits.

10 23. Plaintiff seeks to compel defendant to remove all access barriers from their
11 facilities, as required by Federal and California access laws, regulations, and standards to provide
12 plaintiff and other similarly situated individuals full and equal access to the accommodations,
13 facilities, and opportunities that defendant offers and provides to nondisabled members of the
14 public. Plaintiff also seeks deterrence damages against defendant under California law.

15 24. Plaintiff is informed, believes, and alleges that defendant failed to provide full and
16 equal access to other accommodations and services at their facility and have failed to remove
17 other barriers that have yet to be identified. Thus, plaintiff's legal representative requires a
18 formal inspection of defendant's premises and an opportunity to identify and assess all other
19 existing barriers affecting persons with disabilities who are similarly situated to plaintiff. This
20 inspection will enable plaintiff to determine the appropriate scope of injunctive relief required to
21 correct all of defendant's past, present, and ongoing violations of Federal and California
22 disability access standards, regulations, and laws.

23 25. Plaintiff is informed, believes, and alleges that he and other similarly situated
24 disabled persons will continue to be discriminated against on an ongoing basis as long as
25 defendant continues to violate the ADA and California access laws by failing to provide full and
26 equal access to accommodations and opportunities that it offers and provides to the public.
27 Plaintiff has no adequate remedy at law to address recurring injury should he or other disabled
28 persons visit defendant's facility in its current inaccessible configuration and operation. Unless

1 the Court grants the requested relief, plaintiff and other disabled persons will suffer and continue
 2 to suffer irreparable injury and harm from the denial of full and equal access to accommodations,
 3 facilities, opportunities, and services offered and provided by defendant to the public.

4 26. Defendant's acts and omissions in owning, operating, leasing, constructing,
 5 altering, and maintaining the subject facilities denied plaintiff full and equal access to the
 6 accommodations, opportunities, and services defendant offers to the public. Thus, plaintiff
 7 seeks an injunction from the Court requiring defendant to make its accommodations, facilities,
 8 and opportunities fully accessible to disabled persons and to further compel defendant to take all
 9 necessary steps to ensure that the accommodations are maintained in a fully accessible condition
 10 and manner.

11 27. Plaintiff is informed, believes, and alleges that at all relevant times mentioned,
 12 defendant knew, or in the exercise of reasonable diligence should have known, that the barriers at
 13 its facility violated applicable disabled access requirements and standards, and had a
 14 discriminatory impact on plaintiff and other physically disabled persons. However, defendant
 15 has failed to correct the ongoing violations and continues to maintain the very policies and access
 16 barriers that unlawfully discriminate against plaintiff and other persons with disabilities by
 17 precluding them from full and equal access to the accommodations, facilities, and opportunities
 18 that defendant provides to non-disabled persons who visit defendant's facility.

19 **I. FIRST CAUSE OF ACTION**
 20 **VIOLATION OF THE AMERICANS WITH DISABILITIES ACT**
 21 **(42 U.S.C. Section 12101, et seq.)**

22 28. Plaintiff repleads and incorporates by reference, as if fully set forth again herein,
 23 the allegations contained in paragraphs 1 through 27 of this Complaint.

24 29. In 1990, the United States Congress made factual findings regarding persons with
 25 physical disabilities and concluded that laws were needed to more fully protect:

26 [S]ome 43 million Americans with one or more physical or
 27 mental disabilities; [that] historically society has tended
 28 to isolate and segregate individuals with disabilities;
 [that] such forms of discrimination against individuals
 with disabilities continue to be a serious and pervasive
 social problem; [that] the nation's proper goals regarding
 individuals with disabilities are to assure equality of

opportunity, full participation, independent living and economic self-sufficiency for such individuals; [and that] the continuing existence of unfair and unnecessary discrimination and prejudice denies people with disabilities the opportunity to compete on an equal basis and to pursue those opportunities for which our free society is justifiably famous.

See 42 U.S.C. Section 12101.

30. Congress stated as its purpose in passing the Americans with Disabilities Act of 1990 (42 U.S.C. Section 12102) that:

It is the purpose of this Act

(1) to provide a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities;

(2) to provide clear, strong, *consistent, enforceable standards* addressing discrimination against individuals with disabilities;

(3) to ensure that the Federal Government plays a central role in enforcing the standards established in this Act on behalf of individuals with disabilities; and

(4) to invoke the sweep of Congressional authority, including the power to enforce the Fourteenth Amendment and to regulate commerce, in order to address the major areas of *discrimination faced day-to-day* by people with disabilities.

See 42 U.S.C. Section 12101(b) (emphasis added).

31. As part of the Americans with Disabilities Act of 1990, Public Law 101-336, Congress passed “Title III - Public Accommodations and Services Operated by Private Entities.” See Section 301 of the ADA, 42 U.S.C. Section 12181, *et seq.*

32. Section 302 of the ADA, 42 U.S.C. Section 12182, provides that “[n]o individual shall be discriminated against on the basis of disability in the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of any place of public accommodation by any person who owns, leases, or leases to, or operates a place of public accommodation.”

33. The specific prohibitions against discrimination set forth in Section 302(b)(2)(A) of the ADA, 42 U.S.C. Section 12182(b)(2)(A) provide that:

For purposes of subsection (a) of this section, discrimination includes -

(i) the imposition or application of eligibility criteria that

1 screen out or tend to screen out an individual with a disability
2 or any class of individuals with disabilities from fully and
3 equally enjoying any goods, services, facilities, privileges,
4 advantages, or accommodations . . .;

5 (ii) a failure to make reasonable modifications in
6 policies, practices, or procedures, when such modifications
7 are necessary to afford such goods, services, facilities,
8 privileges, advantages or accommodations to individuals
9 with disabilities . . .;

10 (iii) a failure to take such steps as may be necessary to
11 ensure that no individual with a disability is excluded, denied
12 services, segregated or otherwise treated differently than other
13 individuals because of the absence of auxiliary aids and
14 services . . .;

15 (iv) a failure to remove architectural barriers, and
16 communication barriers that are structural in nature, in
17 existing facilities . . . where such removal is readily
18 achievable; and

19 (v) where an entity can demonstrate that the removal of
20 a barrier under clause (iv) is not readily achievable, a failure
21 to make such goods, services, facilities, privileges,
22 advantages or accommodations available through alternative
23 methods if such methods are readily achievable.

24 *See* 42 U.S.C. Section 12182(b)(2)(A)(i)-(v).

25 34. Defendant's acts and omissions set forth herein violated plaintiff's civil rights
26 under the ADA and the regulations promulgated thereunder at 28 C.F.R. Part 36, *et seq.* In 1992,
27 the standards of the ADA were incorporated into California law, making a violation of the ADA
28 sufficient to establish a violation of California Civil Code Sections 51, 52, 54, 54.1, and 54.3,
thereby providing access plaintiffs with the damages remedies available under these statutes.

35. Plaintiff is informed, believes, and alleges that defendant's accommodations and
facility were designed, constructed, and altered or renovated after January 26, 1992, thereby
triggering access requirements under Title III of the ADA that are specifically addressed in the
ADA Accessibility Guidelines ("ADAAG"). Among other things, these requirements expressly
prohibit the design and construction of facilities for first occupancy after January 26, 1993, that
are not readily accessible to, and usable by, individuals with disabilities when it was structurally
practicable to do so. *See* 42 U.S.C. Section 12183(a)(1); 28 C.F.R. Section 36.401(a)(1).

Plaintiff is further informed and believes that defendant violated the ADA by designing and

1 constructing their facilities in a manner that made accommodations, services, and opportunities
 2 not readily accessible to plaintiff and other physically disabled members of the public when it
 3 was structurally practical to do so. *See* 28 C.F.R. Sections 36.401, 36.406; 28 C.F.R. Part 36,
 4 Appendices A and B. Plaintiff is informed, believes, and further alleges that construction of a
 5 readily accessible facility was also required by applicable California law at the time defendant's
 6 facilities were constructed, altered, remodeled, or renovated.

7 36. Plaintiff is informed, believes, and alleges that defendant has denied and
 8 continues to deny full and equal access to plaintiff and to other persons with disabilities, which
 9 amounts to unlawful discrimination against plaintiff and other similarly situated persons on the
 10 basis of their disabilities in violation of the ADA. Specifically, sections 302 and 303 of the ADA
 11 mandates that disabled persons such as plaintiff are entitled to receive the full and equal
 12 enjoyment of the goods, services, facilities, privileges, advantages and accommodations that are
 13 offered to members of the public who are not physically disabled. *See* 42 U.S.C. Sections 12182
 14 and 12183; *see also* 28 C.F.R. Sections 36.101 and 36.201(a).

15 37. Pursuant to Section 308 of the ADA, 42 U.S.C. Section 12188, *et seq.*, plaintiff is
 16 entitled to the remedies and procedures set forth in Section 204(a) of the Civil Rights Act of
 17 1964, 42 U.S.C. 2000(a)-3(a), as plaintiff is being subjected to ongoing discrimination on the basis
 18 of his disability in violation of the ADA and/or has sufficient grounds for believing that he is about
 19 to be subjected to unlawful discrimination. Thus, plaintiff is entitled to an injunction compelling
 20 defendant to comply with its obligations under the ADA and to provide plaintiff and other disabled
 21 persons with full and equal access to the public accommodations and services at defendant's
 22 facility that are enjoyed by nondisabled persons. *See* 42 U.S.C. Section 12188(a)(2) (providing
 23 that "[i]n cases of violations of § 302(b)(2)(A)(iv) and § 303(a) . . . injunctive relief shall include
 24 an order to alter facilities to make such facilities readily accessible to and usable by individuals
 25 with disabilities to the extent required by this title."); *see also* 28 C.F.R. Section 36.501(a), (b).

26 38. Defendant's acts and omissions giving rise to this action have caused plaintiff to
 27 incur legal expenses and attorney's fees to enforce plaintiff's rights against defendant's unlawful
 28 discrimination and to enforce provisions of the law requiring full and equal access to public

1 accommodations for persons with disabilities. Thus, plaintiff seeks to recover all reasonable
 2 attorney's fees, litigation expenses (including expert fees) and costs, pursuant to Section 505 of
 3 the ADA (42 U.S.C. Section 12205) and 28 C.F.R. Section 36.505, which is the United States
 4 Department of Justice's regulations for enforcement of Title III of the ADA. Plaintiff also seeks
 5 to compel defendant to make its facility accessible to all disabled members of the public, thereby
 6 justifying recovery of "public interest" attorney's fees pursuant to California Code of Civil
 7 Procedure Section 1021.5.

8 WHEREFORE, plaintiff prays that this Court grants the requested injunctive relief and
 9 award attorney's fees, litigation expenses, and costs as hereinafter stated against defendant.

10 **II. SECOND CAUSE OF ACTION**
 11 **VIOLATION OF CALIFORNIA CIVIL CODE**
SECTIONS 54, 54.1, AND 54.3, et seq.

12 39. Plaintiff repleads and incorporates by reference as if fully set forth again herein,
 13 the allegations contained in paragraphs 1 through 38 of this Complaint.

14 40. California Civil Code Section 54 provides that persons with physical disabilities
 15 are not to be discriminated against because of their physical handicap or disability. This section
 16 provides that:

17 (a) Individuals with disabilities . . . have the same rights
 18 as the general public to full and free use of the streets,
 19 highways, sidewalks, walkways, public buildings,
 20 medical facilities, including hospitals, clinics, and
 physicians' offices public facilities, and other public
 places.

21 41. California Civil Code Section 54.1 provides that persons with disabilities shall not
 22 be denied full and equal access to places of public accommodation or facilities:

23 (a)(1) Individuals with disabilities shall be entitled to *full and*
 24 *equal access*, as other members of the general public, to
 25 accommodations, advantages, facilities, medical facilities,
 26 including hospitals, clinics, and physicians' offices, and
 27 privileges of all common carriers, airplanes, motor vehicles,
 28 railroad trains, motorbuses, streetcars, boats, or any other
 public conveyances or modes of transportation (whether private,
 public, franchised, licensed, contracted, or otherwise provided),
 telephone facilities, adoption agencies, private schools, hotels,
 lodging places, places of public accommodation, amusement or
 resort, and other places to which the general public is invited,

1 subject only to the conditions and limitations established by law,
2 or state or federal regulation, and applicable alike to all persons.

3 *See* California Civil Code Section 54.1(a)(1) (emphasis added).

4 42. California Civil Code Section 54.1 further provides that a violation of the
5 Americans with Disabilities Act of 1990 constitutes a violation of Section 54.1. Specifically,
6 Section 54.1(d) provides that:

7 (d) A violation of the right of an individual under the
8 Americans with Disabilities Act of 1990 (Public Law 101-336)
9 *also constitutes a violation of this section*, and nothing in this
violation of that act.

10 *See* California Civil Code Section 54.1(d) (emphasis added).

11 43. Plaintiff is a qualified person within the meaning of Civil Code Section 54.1
12 whose rights have been violated by defendant as prohibited by Civil Code Sections 54 and 54.1.
13 Each of the specific architectural barrier defendant has created, maintained, and knowingly failed
14 and/or refused to remove constitutes a separate act in violation of Sections 54 and 54.1 of the
15 California Civil Code. Plaintiff has been, and continues to be, denied full and equal access to the
16 public accommodations and services available at defendant's facilities. Accordingly, plaintiff
17 seeks statutory damages pursuant to California Civil Code Section 54.3(a) for each day on which
18 he visited or has been deterred from visiting defendant's facility due to his knowledge, belief, and
19 personal experiences that the accommodations and services there are inaccessible to plaintiff and
20 to similarly situated persons. Section 54.3(a) of the California Civil Code provides that:

21 Any person or persons, firm or corporation, who denies or
22 interferes with admittance to or enjoyment of the public facilities
23 as specified in Sections 54 and 54.1 or otherwise interferes with
the rights of an individual with a disability under Sections 54,

24 54.1 and 54.2 is liable for each offense for the actual damages and
25 any amount as may be determined by a jury, or the court sitting
26 without a jury, up to a maximum of three times the amount of
27 actual damages but in no case less than one thousand dollars
(\$1,000), and attorney's fees as may be determined by the court
in addition thereto, suffered by any person denied any of the rights
provided in Sections 54, 54.1 and 54.2.

28 *See* California Civil Code Section 54.3(a).

1 44. Plaintiff suffered violations of his rights under California Civil Code Sections 54
2 and 54.1 when he was denied full and equal access to the public accommodations, facilities, and
3 services stated herein at defendant's facility. Defendant has denied plaintiff full and equal access
4 to the accommodations, facilities, and opportunities offered at defendant's store, on the basis of
5 plaintiff's status as a person with physical disabilities.

6 45. As a result of defendant's acts and/or omissions which denied plaintiff full and
7 equal access to the facilities, accommodations, and services offered at defendant's store,
8 defendant, in owning, operating, managing, and maintaining the subject facility, caused plaintiff
9 to suffer multiple violations of his civil rights, including but not limited to his rights under
10 Sections 54, 54.1 and 54.3 of the California Civil Code.

11 46. Plaintiff is informed and believes that before he visited defendant's facility,
12 defendant was aware of its legal obligations under Federal and California law requiring owners
13 and operators of public accommodations to make their facilities readily accessible to persons
14 with disabilities. Yet, despite this knowledge, defendant discriminated against plaintiff on
15 account of his physical disability and denied him full and equal access to the accommodations,
16 facilities, services, and opportunities that were fully available to nondisabled persons at this
17 facility in violation of Sections 54 and 54.1 of the California Civil Code.

18 47. Plaintiff seeks to recover statutory damages pursuant to Section 54.3(a) of the
19 California Civil Code against defendant for violating his civil rights as a person with a disability
20 during his visit defendant's store. Additionally, plaintiff seeks deterrence damages and currently
21 believes he will encounter the same and/or additional barriers and would again be denied full and
22 equal access to the facility and its goods, services, and accommodations if plaintiff returns to
23 defendant's business to access its public accommodations.

24 48. As a result of defendant's acts and omissions in this regard, plaintiff has incurred
25 legal expenses to enforce his civil rights and to enforce provisions of the law protecting access
26 for persons with physical disabilities and prohibiting discrimination against persons with physical
27 disabilities. Pursuant to California Civil Code Section 54.3, plaintiff seeks to recover his
28 reasonable attorney's fees, legal expenses, and costs incurred in the prosecution of this matter if

he is deemed to be the prevailing party. Plaintiff also seeks to recover statutory damages from defendant and to compel defendant to make its facilities and accommodations fully accessible to plaintiff and other similarly situated members of the public who have disabilities. Thus, an injunction is appropriate under Section 55 of the California Civil Code as well as an award of public interest attorney's fees pursuant to Section 1021.5 of the California Code of Civil Procedure if plaintiff is deemed to be the prevailing party.

WHEREFORE, plaintiff prays for relief as hereinafter stated.

**III. THIRD CAUSE OF ACTION
DENIAL OF FULL AND EQUAL ACCESS IN A PUBLIC FACILITY
TO A PERSON WITH A DISABILITY IN VIOLATION OF CALIFORNIA
DISABLED ACCESS STATUTES**

49. Plaintiff repleads and incorporates by reference, as if fully set forth again herein, the allegations contained in paragraphs 1 through 48 of this Complaint.

50. Plaintiff and other similarly situated physically disabled persons whose physical conditions require the use of a wheelchair or other mobility device are unable to use the public facilities at the General Plumbing Supply store in a "full and equal" basis until defendant fully brings their facilities and accommodations into compliance with provisions of California Health & Safety Code Section 19955, *et seq.* Plaintiff is a member of the portion of the public whose rights are protected by provisions of this statute.

51. Under Section 54.1 of the California Civil Code, persons with disabilities are entitled to full and equal access to public accommodations. "Public accommodations" are further defined as a building, structure, facility complex, or improved area which is used by the general public and shall include parking lots, paths of travel, seating, and attendant facilities.

52. Defendant owns and operates the General Plumbing Supply store, thereby subjecting defendant's facilities to the requirements of California's Disabled Rights statutes. California Health & Safety Code Section 19955 provides in pertinent part:

The purpose of this part is to insure that public accommodations or facilities constructed in this state with private funds adhere to the provisions of Chapter 7 (commencing with Sec. 4450) of Division 5 of Title 1 of the Government Code. For the purposes

1 of this part “public accommodation or facilities” means a building,
 2 structure, facility, complex, or improved area which is used by the
 3 general public and shall include auditoriums, hospitals, theaters,
 4 restaurants, hotels, motels, stadiums, and convention centers.

When sanitary facilities are made available for the public, clients
 or employees in such accommodations or facilities, they shall be
 made available for the handicapped.

5 53. California Health & Safety Code Section 19956, which appears in the same
 6 chapter as Section 19955, provides in pertinent part, “accommodations constructed in this state
 7 shall conform to the provisions of Chapter 7 (commencing with Sec. 4450) of Division 5 of Title
 8 1 of the Government Code” Section 19956 of the Health & Safety Code was operative as
 9 of July 1, 1970, and is applicable to all public accommodations constructed or altered after that
 10 date. Plaintiff is informed, believes, and alleges that defendant’s facilities were constructed,
 11 altered, or repaired after July 1, 1970. Thus, the construction and/or modification of these
 12 facilities are subject to the requirements of Part 5.5, Section 19955, *et seq.*, of the California
 13 Health & Safety Code, which requires defendant to provide full and equal access to persons with
 14 disabilities upon completion of such construction, alteration, structural repairs or additions under
 15 Health & Safety Code Section 19959.

16 54. Plaintiff is informed, believes, and alleges that construction, alterations, structural
 17 repairs and/or additions were completed on the subject property after January 1, 1968, the
 18 effective date of California Government Code Section 4450, *et seq.*, and the July 1, 1970 effective
 19 date of Health & Safety Code Sections 19955-19959. Thus, defendant was required to provide
 20 accessible accommodations for persons with disabilities in each regard sought in this Complaint.

21 55. Pursuant to the authority under Government Code Section 4450, *et seq.*, the State
 22 Architect promulgated regulations for the enforcement of these provisions. Effective July 1,
 23 1982, Title 24 of the California Building Standards Code (formerly known as the California
 24 Administrative Code) adopted the California State Architect’s Regulations, which apply to any
 25 construction or alterations of public accommodations occurring after the effective date. Title 24
 26 was in effect at the time of each alteration, which occurred at defendant’s facility after January 1,
 27 1982. Thus, the alterations triggered defendant’s duty to comply with the access standards of
 28 Title 24 whenever each such “alteration, structural repair or addition” is carried out.

1 56. Defendant's facility and accommodations are "public accommodations" or
2 "facilities" within the meaning of Health & Safety Code Section 19955, *et seq.* Defendant
3 violated plaintiff's civil rights by denying him and similarly situated persons with disabilities
4 full and equal access to the accommodations and opportunities that defendant provides to
5 nondisabled members of the public.

6 57. As a result of defendant's ongoing failure to provide plaintiff with full and equal
7 access to the public accommodations and related facilities at defendant's store, defendant has
8 denied plaintiff and similarly situated persons of their civil rights to full and equal access to the
9 aforementioned accommodations. Plaintiff believes defendant will continue its unlawful and
10 discriminatory practices unless the Court compels defendant to provide accessible facilities as
11 discussed herein.

12 58. Plaintiff has had to incur legal expenses to enforce his civil rights to receive full
13 and equal access to the public accommodations for himself and for other similarly situated
14 persons with physical disabilities. Because plaintiff seeks to enforce an important right that also
15 affects the public interest, plaintiff is entitled to recover his reasonable attorney's fees and legal
16 costs pursuant to the provisions of California Code of Civil Procedure Section 1021.5. Plaintiff
17 additionally seeks to recover his attorney's fees pursuant to California Civil Code Section 54.3
18 and/or in the alternative, plaintiff will seek to recover his attorney's fees, costs and legal expenses
19 pursuant to Section 204(a) of the Civil Rights Act of 1964 (42 U.S.C. 2000(a)-3(a)) if he is
20 deemed to be the prevailing party.

21 59. Defendant's aforementioned acts have proximately caused and will continue to
22 cause irreparable injury to plaintiff if defendant is not enjoined by this Court. Accordingly,
23 plaintiff seeks injunctive relief and an order compelling defendant to make its facility and
24 accommodations readily accessible to, and fully and equally accessible by, plaintiff and other
25 similarly situated persons with disabilities.

26 WHEREFORE, plaintiff prays for relief as hereinafter stated.

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28 ///

**IV. FOURTH CAUSE OF ACTION
FOR DENIAL OF ACCESS TO FULL AND EQUAL ACCOMMODATIONS,
ADVANTAGES, FACILITIES, PRIVILEGES AND/OR SERVICES IN
VIOLATION OF CALIFORNIA CIVIL CODE SECTION 51, ET SEQ.
(THE UNRUH CIVIL RIGHTS ACT)**

60. Plaintiff repleads and incorporates by reference, as if fully set forth again herein, the allegations contained in paragraphs 1 through 59 of this Complaint.

61. Defendant's actions and omissions and failure to act as reasonable and prudent owners and/or operators of a public accommodation by ignoring, maintaining, and/or creating architectural barriers, policies, practices and/or procedures that have precluded plaintiff and other similarly situated persons with disabilities from full and equal access to the accommodations and opportunities offered by defendant to nondisabled members of the public, violate Section 51 of the California Civil Code, known as the Unruh Civil Rights Act. The Unruh Act provides:

(a) This section shall be known, and may be cited, as the Unruh Civil Rights Act.

(b) All persons within the jurisdiction of this state are free and equal, and no matter what their sex, race, color, religion, ancestry, national origin, *disability*, medical condition, marital status, or sexual orientation are entitled to the full and equal accommodations, advantages, facilities, privileges, or services in all business establishments of every kind whatsoever.

(c) This section shall not be construed to confer any right or privilege on a person that is conditioned or limited by law or that is applicable alike to persons of every sex, color, race, religion, ancestry, national origin, or *disability*, medical condition, marital status, or sexual orientation.

(d) Nothing in this section shall be construed to require any construction, alteration, repair, structural or otherwise, or modification of any sort whatsoever, beyond that construction, alteration, repair, or modification that is otherwise required by other provisions of law, to any new or existing establishment,

facility, building, improvement, or any other structure, nor shall anything in this section be construed to augment, restrict, or alter in any way the authority of the State Architect to require construction, alteration, repair, or modifications that the State Architect otherwise possesses pursuant to other laws.

* * * *

(f) A violation of the right of any individual under the Americans with Disabilities Act of 1990 (Public Law 101-336) *shall also constitute a violation of this section.*

1 See California Civil Code Section 51 (emphasis added).

2 62. Defendant's acts and omissions have denied plaintiff full and equal access to
3 accommodations, advantages, facilities, privileges and services in a business establishment on the
4 basis of physical disability in violation of Cal. Civil Code Section 51. Thus, defendant has
5 violated plaintiff's civil rights by denying him full and equal access to accommodations, services,
6 and opportunities provided to nondisabled persons who visit defendant's facility.

7 63. Each violation of the ADA, as stated above, which is incorporated herein as if
8 separately stated, is also a violation of the Unruh Civil Rights Act as provided by Section 51(f)
9 of the California Civil Code. Plaintiff has been, and continues to be, denied full and equal access
10 to the public accommodations and services available to the general public at defendant's store.
11 Thus, plaintiff seeks statutory damages pursuant to Civil Code Section 52(a) for his visits to
12 General Plumbing Supply and for each occasion he has been deterred from returning because of
13 his knowledge and belief that the accommodations and services offered at defendant's business
14 remain inaccessible to plaintiff and to other similarly situated persons with disabilities. These
15 violations of the Unruh Act support an award of minimum statutory damages of \$4,000 against
16 defendant for each actionable count of unlawful discrimination experienced by plaintiff.

17 64. Defendant's acts and omissions have required plaintiff to incur legal expenses
18 and attorney's fees to enforce his civil rights under applicable Federal and California laws that
19 prohibit discrimination against persons with disabilities. Accordingly, plaintiff seeks to recover
20 his reasonable attorney's fees, litigation expenses and legal costs, pursuant to Civil Code Section
21 52. Because plaintiff's action also seeks to require defendant to make its facility fully accessible
22 to all disabled members of the public, plaintiff is entitled to an award of "public interest"
23 attorney's fees and costs pursuant to California Code of Civil Procedure Section 1021.5.

24 WHEREFORE, plaintiff prays for relief as hereinafter stated.

25 **PRAYER FOR RELIEF**

26 Plaintiff prays that this Court award damages and provide relief as follows:

27 **I. Prayer for FIRST CAUSE OF ACTION for Violation of the Americans with**
28 **Disabilities Act of 1990 (42 U.S.C. §12101, *et seq.*)**

1 1. For injunctive relief, compelling defendant GENERAL PLUMBING to make its
2 business located at 1530 San Luis Road, Walnut Creek, California, 94597, and its related
3 facilities, accommodations, and services available, accessible to, and usable by plaintiff and
4 other individuals with disabilities as required by the ADA, 42 U.S.C. Section 12181, *et seq.*, and
5 to make any and all required modifications in policies, practices, and procedures to provide
6 plaintiff and similarly situated individuals full and equal access to the goods, services, facilities,
7 privileges, advantages, opportunities, and accommodations that defendant offers to nondisabled
8 members of the public.

9 2. For reasonable attorney's fees, litigation expenses, expert costs, and costs of suit,
10 if plaintiff is deemed to be the prevailing party; and

11 3. For such other and further relief as the Court may deem to be just and proper.

12 **II. Prayer for SECOND CAUSE OF ACTION for Denial of Full and Equal Access**
13 **in Violation of California Civil Code Sections 54, 54.1 and 54.3, *et seq.***

14 1. For statutory damages against defendant GENERAL PLUMBING pursuant to
15 California Civil Code Section 54.3 for each separate occasion of actionable discrimination that
16 plaintiff sustained when he encountered architectural barriers at defendant's business and was
17 denied full and equal access to the goods, services, accommodations, and opportunities offered
18 to nondisabled members of the public, and for deterrence damages;

19 2. For attorney's fees pursuant to California Civil Code Section 54.3 and California
20 Code of Civil Procedure Section 1021.5, if plaintiff is the prevailing party, and an injunction under
21 California Civil Code Section 55;

22 3. For all costs of suit, expert costs and prejudgment interest, California Civil Code
23 Section 3291;

24 4. For such other and further relief as the Court may deem to be just and proper.

25 **III. Prayer for THIRD CAUSE OF ACTION for Denial of Accessible Public**
26 **Facilities in Violation of California Health & Safety Code Section 19955, *et seq.***

27 1. For injunctive relief, compelling defendant GENERAL PLUMBING to
28 make its business located at 1530 San Luis Road, Walnut Creek, California, 94597, and its

1 related facilities, accommodations, and services available, accessible to, and usable by plaintiff
2 and other individuals with disabilities, as required by applicable California law;

3 2. For attorney's fees pursuant to California Code of Civil Procedure Section 1021.5,
4 if plaintiff is deemed to be the prevailing party;

5 3. For all costs of suit, expert costs and prejudgment interest, California Civil Code
6 Section 3291;

7 4. For such other and further relief as the Court may deem to be just and proper.

8 **IV. Prayer for FOURTH CAUSE OF ACTION for Denial of Access to Full and**
9 **Equal Accommodations, Advantages, Facilities, Privileges and/or Services in**
10 **Violation of California Civil Code Section 51, et seq.**

11 1. For statutory damages against defendant GENERAL PLUMBING pursuant to
12 California Civil Code Section 52, et seq. for each separate occasion of discrimination that
13 plaintiff sustained when he encountered architectural barriers at General Plumbing Supply located
14 at 1530 San Luis Road, Walnut Creek, California, 94597, and was denied full and equal access to
15 the goods, services, opportunities, and accommodations offered at the subject facility to
16 nondisabled members of the public, and for deterrence damages;

17 2. For attorney's fees pursuant to California Civil Code Section 52, if plaintiff is
18 deemed to be the prevailing party;

19 3. For all costs of suit, expert costs and prejudgment interest, California Civil Code
20 Section 3291;

21 4. For such other and further relief as the Court may deem to be just and proper.

22 Dated: May 27, 2022

LAW OFFICE OF JASON G. GONG
A Professional Corporation

/s/ Jason G. Gong

23
24 By: _____
25 JASON G. GONG
26 Attorney for Plaintiff
27 BEHRUZ BONSHAHI
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